In the High Court of Judicature at Madras

Dated: 12.03.2007

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N. PAUL VASANTHAKUMAR

Writ Appeal No.3545 of 2004

Jagmogan Lamba .. Appellant

Vs

1.P.N.Writer and Co.,
rep. by its General Manager,
No.3, 2nd Street, III Main Road,
C.I.T. Nagar Extension,
Chennai-600 035.

2.The Special Deputy Commissioner
of Labour, Appellate Authority under
the Tamil Nadu Shops and Establishments
Act, 1947, Chennai-6. .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 02.08.2004 made in WPMP No.43874 of 2003 and WVMP No.739 of 2004 in W.P.No.36141 of 2003 to stay all further proceedings pursuant to the order passed by the Ist respondent dated 20.11.2002 made in TSE.No.1/1A/16/2001 and to vacate the stay granted on 10.12.2003 made in WPMP.43874/03 and direct the Ist Respondent therein to pay the petitioner therein last drawn salary of Rs.9900/- p.m. under section 17(B) of I.D Act.

For Appellant : Mr.K.V.Ananthakrishnan
For 1st Respondent : Mr.Vijayan for
M/s King & Patridge
For IInd Respondent : No Appearance

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM,J.)

The above writ appeal is directed against the common order of the learned single Judge dated 02.08.2004 made in WPMP No.43874 of 2003 and WVMP No.739 of 2004 in W.P.No.36141 of 2003, in and by which, the learned single Judge has made the stay absolute and also dismissed the

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direction petition viz., WPMP No.13270 of 2004 filed under Section 17-B of the Industrial Disputes Act (hereinafter referred to as "the Act").

2. Heard the learned counsel appearing for the appellant-workman as well as the first respondent-Management.

3. It is brought to our notice that in the writ petition filed by the Management, questioning the order of the Special Deputy Commissioner of Labour, Chenni-6, the workman has filed a counter affidavit, particularly in para 10, he furnished the following information.

> "I state that I am not gainfully employed any where. I have sent a written request dated 02.12.2002 to the petitioner to reinstate me into service with back wages.
>
> But, the petitioner under some pretext or other did not permit me to join duty. Till date my backwages works out to Rs.6,18,100/-. I have filed C.P.No.41 of 2003 claiming backwages at Rs.8.07,200/-. My last drawn salary at the time of termination was Rs.9900/- per month."

4. There is no reply affidavit controverting the above factual information by the Management. However, the learned single Judge, without adverting to the assertion of the workman that he was not gainfully employed anywhere and when he was not allowed to join duty by the Management, made the stay absolute without any condition. In the same order, the learned single Judge has dismissed the petition filed under Section 17-B of the Act.

5. On going through the factual details, we are satisfied that the learned single Judge has committed an error in making the stay absolute without considering the claim of the workman. The learned counsel appearing for the appellant points out that as on date, 17-B arrears works out to Rs.2,80,000/-.

6. The learned counsel appearing for the first respondent-Management has brought to our notice that even as early as on 25.03.2000, the workman was employed and he was getting a salary of Rs.6600/- per month.

7. On the other hand, the learned counsel appearing for the appellant has brought to our notice that the workman joined Freight systems India Ltd., on 25.03.2000 after his termination on 12.11.1998 and after his withdrawal of subsistence allowance petition on 27.12.1999. It is further stated that he is no longer in service in the said Freight systems India Limited and his temporary services came to an end on 19.05.2001 and all the above facts were disclosed before the authority as well as to the management. These specific averments were mentioned in para 8 of the counter affidavit filed by the workman in W.P.No.36141 of 2003.

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8. Considering all these aspects and also of the fact that the writ petition is of the year 2003, we direct the first respondent-Management to pay a sum of Rs.1,50,000/- towards 17-B arrears within a period of four weeks from the date of receipt of a copy of this order. Inasmuch as we have not directed the management to pay the entire 17-B arrears and of the fact that the writ petition is pending from 2003, we direct the registry to post the writ petition for final hearing on 11.06.2007.

9. The writ appeal is allowed on the above terms. No costs. It is made clear that for any reason, if the writ petition is not taken up on the date fixed, the workman is free to move the concerned Judge for further direction relating to the payment of amount under Section 17-B of the Act.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Special Deputy Commissioner
of Labour, Appellate Authority under
the Tamil Nadu Shops and Establishments
Act, 1947, Chennai-6.

2. The Section Officer,
Writ Section, High Court, Madras.
(To post the WP for final hearing
on 11.06.2007)

3. The Section Officer,
Judicial Section,
High Court, Madras.
(Post the WP on 11.06.2007)

1 cc To M/S.King & Patridge, Advocate, SR.15406.

W.A. No.3545 of 2004

PPV(CO)
RVL 20.03.2007

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